



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

NO. 76-108

Cleaves McDannald,
Petitioner

V

City of League City

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF TEXAS

George R. Pain
2 Houston Center
Suite 1016
Houston, Texas 77002
713/654-4437

Counsel for Petitioner

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PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF TEXAS

Petitioner, Cleaves McDannald,
prays that a writ of certiorari issue to
review the Orders of the Supreme Court
of the State of Texas rendered on February
18, 1976, and April 28, 1976.

OPINIONS BELOW

The Texas Supreme Court affirmed
the judgment of the 14th Court of Civil
Appeals by refusing Petitioner's Appli-
cation for Writ of Error and Motion for

Rehearing thereon without opinion. The
14th Court of Civil Appeals affirmed the
Trial Court's dismissal of Petitioner's
lawsuit by an opinion that is published
at 528 S.W.2d 880. Such opinions and
judgment appear at Appendix A and B,
respectively, infra., pp. 12 - 17.

JURISDICTION

The order of the Texas Supreme
Court overruling Petitioner's Motion for
Rehearing of Application for Writ of Error
was entered on April 28, 1976. See
Appendix C, p. 18, infra. This petition
for certiorari was filed less than 90
days from the date aforesaid. The
jurisdiction of this Court is invoked
under 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

Respondent, a municipal corporation,
sued Petitioner for unpaid ad valorem
taxes. Petitioner counter-claimed that

such taxes were illegal because Respondent's incorporation and adoption of home rule charter were accomplished by fraud thereby rendering all subsequent municipal acts void.

The Court of Civil Appeals affirmed the trial court's judgment for Respondent and the Texas Supreme Court refused Petitioner's Application for Writ of Error.

The constitutional questions are:

1. Whether there was a deprivation of Petitioner's property (taxes) without due process of law by not allowing Petitioner to present evidence of fraud in the incorporation and adoption of a home rule charter of Respondent.

2. Whether there was a denial of due process by the failure of the Texas Supreme Court to rule on Petitioner's properly presented federal constitutional question and its further failure to pro-

vide an adequate independent nonfederal ground for sustaining the Court of Civil Appeals judgment against Petitioner.

3. Whether there was a denial of due process by the Supreme Court of Texas by not reversing the opinion and judgment of the Court of Civil Appeals which court deliberately failed to follow a rule of law that requires such court to rule on Petitioner's properly raised points of error that might lead to a reversal.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment XIV, Sec. 1 states in part:

" . . . nor shall any state deprive any person of life, liberty, or property without due process of law . . . "

STATEMENT OF FACTS

Petitioner's defense to Respondent's suit for ad valorem taxes was that since

Respondent's incorporation and adoption of home rule charter was fraudulent, and therefore void, its subsequent attempts to tax Petitioner were void. Respondent filed a plea in bar against this defense; the trial court sustained such plea and entered judgment against Petitioner for \$14,271.36 without allowing Petitioner to present his evidence of fraud. (App. A, p. 12).

Petitioner perfected his appeal to the 14th Court of Civil Appeals and specifically raised the 14th Amendment federal issues of deprivation of property without due process in the Brief of Appellant to the Court of Civil Appeals. (App. G, p. 25).

Said Court of Civil Appeals failed to address itself to the constitutional issues raised by Petitioner and, in addition, made no ruling on any other points of error so raised by Petitioner

(App. A., p. 15). Petitioner herein then filed a Motion for Rehearing to said Court of Civil Appeals reciting five assignments of error, among them being the failure of said Court to pass upon the constitutional issues of deprivation of property without due process of law. (App. D, p. 20). Said Court on November 29, 1975, overruled such Motion for Rehearing.

On December 2, 1975, Petitioner filed its Application for Writ of Error to the Texas Supreme Court again raising, among other issues, the failure of the Court of Civil Appeals to rule upon the abovementioned constitutional issues. (App. E, p. 22).

On February 18, 1976, The Texas Supreme Court, without opinion, refused said Application for Writ of Error by stating there was no error requiring reversal. (App. F, p. 23). On March 4,

1976, Petitioner filed therein its Motion for Rehearing again raising the constitutional issue, which Motion was overruled on April 28, 1976. (App. C, p. 18).

REASONS FOR GRANTING THE WRIT

It is well settled Texas law that a private citizen may collaterally attack the existence of a municipal corporation if its incorporation was founded in fraud. Parks v. West, 111 S.W. 726 (Tex. Sup., 1908); City of West Lake Hills v. State, 466 S.W.2d 722 (Tex. Sup., 1971). This point was raised to the Court of Civil Appeals (App. D, p. 19) and to the Texas Supreme Court (App. E, p. 21), and both courts ignored such issue and failed to rule on it.

The Texas Supreme Court affirmed the judgment that prevented Petitioner from putting on proof of fraud to

collaterally attack Respondent. This was itself obviously a violation of the 14th Amendment prohibition against deprivation of property without due process of law. Such constitutional issue was presented to and ignored by the Court of Civil Appeals and the Texas Supreme Court (App. D, p. 20; App. E, p. 21). Instead of ruling on the constitutional issues raised, the Texas Supreme Court erroneously let stand the judgment and opinion of the Court of Civil Appeals, apparently on the basis of "chaotic conditions" and the "validity of municipal bonds"; grounds that were totally irrelevant to the issues raised. (App. A, p. 15; App. G, p. 24).

This Court should grant review because the Texas Courts, by their procedure of silence on the constitutional issue, have closed the door to any consideration of a claim of denial of a federal right.

Young v. Ragen, 337 U.S. 235; Henry v. State of Mississippi, 379 U.S. 415.

Such bar to the assertion of a federal question is itself a federal question for this Court to pass on. Douglas v. State of Alabama, 357 U.S. 449. The reasons indicated for affirmance in the Court of Civil Appeals might at first appear to be sufficient nonfederal grounds to preclude this Court's review. However, a closer inspection of the points of error and issues that prompted such opinion, (App. G, p. 24) lead to the inescapable conclusion that such grounds were without any fair or substantial support and do not adequately support the judgment of affirmance and therefore call for a review by this Court. N.A.A.C.P. v. State of Alabama, 357 U.S. 449; Demorest v. City Bank Farmers Trust Co., 321 U.S. 36.

In failing to rule on the points of

error and constitutional issues raised by Petitioner (App. G., p. 25), the state appellate courts failed to follow the rule laid down by the Texas Supreme Court in McKelvy v. Barber, 381 SW2 59 (1964) which stated ". . . the intermediate court plainly errs when it affirms without considering a contention that might lead to a reversal . . ." Such failure to rule was presented to both appellate courts (App. D, p. 19; App. E, p. 21). This failure and refusal obviously constitutes an unlawful judicial denial of a right of legal redress that is a denial of due process guaranteed by the 14th Amendment. Abbot v. Tacoma Bank of Commerce, 175 U.S. 409.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the

orders of the Texas Supreme Court.

Respectfully submitted,

GEORGE R. PAIN
2 Houston Center
Suite 1016
Houston, Texas 77002
713/654-4437

APPENDIX A

Affirmed, and Opinion filed October
8, 1975.

CLEAVES McDANNALD, Appellant

VS

CITY OF LEAGUE CITY, Appellee

- - - - -

Appeal from 56th District Court
of Galveston County

- - - - -

This is an appeal from a judgment ordering appellant, Cleaves McDannald, to pay delinquent ad valorem taxes to appellee, City of League City. Appellee brought suit in the 56th District Court of Galveston County, and appellant counter-claimed that the assessment and collection of the taxes were illegal because appellee's incorporation and subsequent adoption of its home rule charter were accompanied by means of fraud, rendering the city's incorporation

and all subsequent municipal acts void. The appellee filed a plea in bar as to appellant's counter-claim alleging that appellant's counter-claim presented a collateral attack on the validity of a municipal incorporation, which attack may be maintained only by the state in a quo warranto proceeding, and also that League City's incorporation, boundaries, and subsequent annexations of territory have been validated by act of the Legislature.

Appellant stipulated that he did not contest the computation of the taxes, and that his counter-claim was his only defense. Therefore, having sustained appellee's plea in bar, the trial court entered judgment against appellant in the amount of \$14,271.36 taxes, penalty and interest.

The City of League City was incorporated pursuant to TEX.REV.CIV.STAT.ANN.

art. 966 (1925), which authorizes the incorporation of municipalities containing six hundred or more inhabitants. According to the procedure provided in TEX.REV.CIV.STAT.ANN. arts. 1134 and 1136, an application for incorporation was filed with the County Judge of Galveston County on November 10, 1961, and the County Judge ordered an election to be held on December 9, 1961. Both the petition and the election order specified the town's population as being between 5,000 and 10,000 inhabitants and the area to be incorporated as 8.9 square miles. This original incorporation of 8.9 square miles of area was purportedly authorized by Article 971, TEX. REV.CIV. STAT. ANN., which limits to 9 square miles the total area which may be included by the original incorporation of a city of 5,000 to 10,000 inhabitants. On March 27, 1962 League City adopted a

home rule charter and thereafter annexed additional territory by municipal ordinances on April 19, 1961 and February 10, 1966. Part of appellant's property was included within the city by virtue of the original incorporation, and the remainder was annexed through the 1962 annexation ordinance.

The adoption of a rule which would permit any individual against whom taxes were assessed or a fine imposed to challenge the validity of the corporate existence of a home rule city by a simple allegation of fraud would create a chaotic condition. Such a rule would permit an individual to take action which would place in question the validity of municipal bonds that have already been issued and would make it virtually impossible for cities to finance their programs in the future.

The judgment of the trial court is

affirmed.

/s/ Bert H. Tunks
Chief Justice

Judgment rendered, and Opinion filed
October 8, 1975.

APPENDIX B

COURT OF CIVIL APPEALS FOR THE
14TH SUPREME JUDICIAL DISTRICT
OF THE STATE OF TEXAS

No. 1193

Cleaves McDannald
v
City of League City

The following judgment was rendered
on October 8, 1975:

"This cause, being an appeal from
the judgment rendered and entered by the
court below on February 7, 1975, came on
to be heard on the transcript of the
record, and the same being inspected,
because it is the opinion of this Court
that there is no error in the judgment,
it is therefore considered, adjudged and
ordered that the judgment of the court
below be affirmed in all things."

APPENDIX C

IN THE SUPREME COURT OF TEXAS

No. B-5675 April 28, 1976

Cleaves McDannald

v

City of League City

Petitioner's motion for rehearing of
application for writ of error having
been duly considered, it is ordered that
said motion be, and hereby is, overruled.

APPENDIX D

COURT OF CIVIL APPEALS FOR
THE 14TH SUPREME JUDICIAL DISTRICT

Cleaves McDannald, Appellant
V
City of League City, Appellee

- - -

Assignments of Error

ASSIGNMENT 1. The Court of Civil Appeals erred in holding that Appellants could not challenge the validity of the corporate existence of a home rule city by an allegation of fraud.

ASSIGNMENT 2. The Court of Civil Appeals erred in failing to consider and sustain Appellant's point of error raising the issue of allowing a collateral attack by an individual upon the existence of the City of League City.

ASSIGNMENT 3. The Court of Civil Appeals erred in failing to consider and sustain Appellant's point of error raising the issue of non-validation by

the Legislature of the corporate existence of the City of League City.

ASSIGNMENT 4. The Court of Civil Appeals erred in declining to make a decision on the issue raised that the trial court action denying Appellants the remedy of collateral attack upon the corporate existence of League City would cause a deprivation of Appellant's property without due process of law in violation of the U.S. Constitution and the Texas Constitution.

ASSIGNMENT 5. The Court of Civil Appeals erred in declining to make a decision on the issue raised that allowing the validation statutes to ratify a void municipal incorporation founded in fraud would amount to a deprivation of Appellant's property without due process of law in violation of the U.S. Constitution and the Texas Constitution.

- - -

APPENDIX E

IN THE SUPREME COURT OF TEXAS

Cleaves McDannald, Petitioner
V
City of League City, Respondent

APPLICATION FOR WRIT OF ERROR

- - -

POINTS OF ERROR

POINT OF ERROR NUMBER ONE

The Court of Civil Appeals erred in holding that Petitioners could not challenge the validity of a home rule city by a simple allegation of fraud.

POINT OF ERROR NUMBER TWO

The Court of Civil Appeals erred in failing to consider and sustain Petitioner's point of error that raised the issue of the allowance of a collateral attack by an individual upon the existence of the City of League City.

POINT OF ERROR NUMBER THREE

The Court of Civil Appeals erred in

failing to consider and sustain Petitioner's point of error that raised the issue of non-validation by the Legislature of the corporate existence of the City of League City.

POINT OF ERROR NUMBER FOUR

The Court of Civil Appeals erred in failing to decide the Constitutional issue raised concerning the deprivation of Petitioner's property without due process of law by denying Petitioner the right to present evidence of fraud in the incorporation of the City of League City.

- - -

APPENDIX F

IN THE SUPREME COURT OF TEXAS

NO. B-5675

February 18, 1976

Cleaves McDannald
V
City of League City

Application of petitioner for writ of error to the Court of Civil Appeals for the Fourteenth Supreme Judicial District having been duly considered, and the Court having determined that the application presents no error requiring reversal of the judgment of the Court of Civil Appeals, it is ordered that said application be, and hereby is, refused.

APPENDIX G

NO. 1193

COURT OF CIVIL APPEALS FOR THE
14TH SUPREME JUDICIAL DISTRICT

- - -

Brief of Appellant

- - -

Point of Error Number One

The trial court erred in sustaining Appellee's plea in bar on the stated grounds that Appellant's counter-claim represented a collateral attack which could only be maintained by the state in a quo warranto proceeding.

Point of Error Number Two

The trial court erred in sustaining Appellee's plea in bar on the stated grounds that the corporate existence and the boundaries of Appellee, as originally set and subsequently enlarged by annexation, had been validated by the Legislature.

- - -

In addition, such holding denying Appellant the right to collaterally attack the municipal proceedings heretofore-mentioned as void would be a violation of the 14th Amendment of the Constitution of the United States as being a deprivation of property without due process of law. Thompson v. City of West Lake Hills, supra.

- - -

Allowing the validating statutes to defeat Appellant's cause of action by ratifying a void municipal incorporation founded in fraud would clearly amount to a deprivation of Appellant's property without due process of law in contravention of the 14th Amendment of the United States Constitution. Thompson v. City of West Lake Hills, supra.

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